

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
SUPPLEMENTAL
APPENDIX**

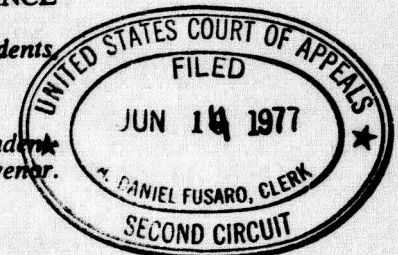
77-6080

**United States Court of Appeals
For The Second Circuit**

UNITED STATES OF AMERICA,

*Plaintiff-Respondent,**against*INTERNATIONAL TELEPHONE AND TELEGRAPH COR-
PORATION and THE HARTFORD FIRE INSURANCE
COMPANY,*Defendants-Respondents**and*

AVIS, INC.,

Defendant-Respondent
*Intervenor.*ON APPEAL FROM AN ORDER OF THE UNITED STATES
FOR THE DISTRICT OF CONNECTICUT

**PROPOSED INTERVENOR-APPELLANT FUQUA
INDUSTRIES, INC.'S SUPPLEMENTAL APPENDIX**

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APPENDIX

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June 9, 1977 letter of Shea Gould Climenko &
Casey to Richard Joyce Smith, as Trustee

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June 9, 1977

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*NOT ADMITTED IN NEW YORK

Richard Joyce Smith, Esq.
As Trustee for
International Telephone & Telegraph Corp.
c/o Whitman & Ransom
522 Fifth Avenue
New York, New York 10036

Dear Mr. Smith:

We now advise you that on behalf of our client, Fuqua Industries, Inc. ("Fuqua"), Fuqua hereby offers to purchase from you the 3,743,504 shares of Common Stock, par value \$1 per share (the "Trust Shares"), of Avis, Inc. ("Avis") held by you as Trustee pursuant to the order dated January 6, 1975 of the United States District Court for the District of Connecticut (the "Court"), as amended and supplemented, in the action entitled United States of America v. International Telephone & Telegraph Corporation (Civ. No. 13,320), upon the following terms and conditions:

1. The price to be paid by Fuqua to you for the Trust Shares held by you shall be \$20.25 in cash.

2. Subject to the requirements of applicable law, as soon as practicable after the consummation of such purchase, Fuqua will propose a tax-free merger of Fuqua and Avis pursuant to which the public shareholders of Avis stock will receive a combination of a new 9-1/2% Cumulative Voting Preferred Stock and Common Stock of Fuqua having a combined value of at least \$20.75. Under the terms of the proposed merger each Avis shareholder would receive for each Avis share four tenths (.4) of a share of Fuqua's new 9-1/2% Cumulative Voting Preferred Stock, \$20.00 par value and Fuqua Common Stock having a market value of \$12.75.

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The new Preferred Stock would have a \$20.00 par value, would pay a 9-1/2% cumulative dividend, would have one vote per share, would not be redeemable for five years and would have a conventional declining redemptive penalty. The number of shares of Fuqua Common Stock to be issued would be based on the average closing price during a 20-day period preceding the merger and would be subject to a minimum of one and maximum of 1.5 shares of Fuqua Common Stock.

3. Consummation of Fuqua's purchase of the Trust Shares from you and entry into the proposed merger are subject to the following conditions, which are for the sole benefit of Fuqua and may be waived by Fuqua in whole or in part:

(a) The Court, by appropriate order and without any conditions adverse to Fuqua (the "Order"), shall have authorized and approved your sale of the 3,743,504 shares held by you to Fuqua pursuant to the terms hereof;

(b) The Order shall have become final, no appeal therefrom or other application for appellate review thereof shall be pending and the time for any such appeal or reviews shall have expired;

(c) Fuqua shall receive good and marketable title to the 3,743,504 shares held by you, free and clear of all liens, claims and encumbrances;

(d) There shall not have been instituted or threatened any action or proceeding by any governmental agency or authority challenging Fuqua's acquisition of the Trust Shares or the payment thereof or the proposed merger; nor shall there be any judgment or order of any court or governmental agency or authority enjoining Fuqua's acquisition of the Trust Shares or the proposed merger;

(e) There shall not, subsequent to December 31, 1976, have occurred or be threatened any material adverse change in the business, financial condition or results of operations of Avis and its subsidiaries or affiliates taken as a whole;

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(f) There shall not have occurred subsequent to the date hereof (i) any general suspension of, or limitation on prices for, trading of securities on The New York Stock Exchange, Inc. or (ii) any declaration of a banking moratorium or suspension of payments in respect of banks in the United States;

(g) Avis shall not have authorized, proposed or announced its intention to propose a merger, consolidation, acquisition of assets, disposition or distribution of assets or any cash dividend (other than regular quarterly cash dividends not in excess of \$.10 per share) or material change in its capitalization or increase in the number of outstanding shares (other than through the exercise of presently existing stock options), or any comparable event not in the ordinary course of business; and

(h) Prior to the entry of the Order, the Board of Directors of Avis, by the requisite vote, shall have approved and recommended the proposed merger, and shall have taken such other action as reasonably may have been requested by Fuqua to facilitate consummation of the proposed merger at the earliest date practicable after the entry of the Order.

4. If subsequent to the date hereof, Avis should split, combine or otherwise change the Trust Shares, or issue any dividends payable in shares or other capital stock of Avis or securities convertible into or exchangeable for any such securities, then the price to be paid pursuant to Sections 1 and 2 and the character of the securities to be acquired pursuant thereto shall be appropriately adjusted.

5. The purchase of the 3,743,504 shares held by you shall take place at the offices of Fuqua at 9:30 a.m. on the first business day following the satisfaction of the condition set forth in Section 3(b), whereupon Fuqua shall cause to be delivered to you federal funds in the amount of \$75,805,956, against receipt from you of the Trust Shares in transferrable form. Fuqua, at its election, may take title to such Shares through a wholly-owned subsidiary of Fuqua.

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In the event that the condition set forth in Section 3(a) shall not have been satisfied by July 31, 1977, or the condition set forth in Section 3(b) shall not have been satisfied by September 30, 1977, or in the event that there shall at any time have occurred any state of facts which shall have rendered incapable of satisfaction any of the conditions set forth in Section 3, then, in any such event, Fuqua shall have the right, at its option, to terminate its obligations hereunder. Nothing herein contained shall preclude Fuqua from, at its option, extending the time for performance or fulfillment of any of the conditions set forth in Section 3.

Our client believes that a merger such as it has proposed would have the following advantages to Avis public shareholders:

(a) It would be tax-free to the Avis shareholders in accordance with IRC § 368(a)(1)(A) and Regs. § 1.368.1(b).

(b) The estimated value of \$20.75 for each share of Avis is substantially above Avis' book value per share.

(c) The 9-1/2% cumulative dividend on the new preferred stock plus the current annual dividend on the Fuqua Common Stock of \$.36 per share would result in each Avis shareholder receiving a total dividend between \$1.12 to \$1.30 (depending upon the amount of Fuqua Common Stock exchanged for each Avis share) or approximately three times the current \$.40 per share which the Avis shareholders are now receiving.

(d) The Avis shareholders would retain a substantial equity participation in the surviving corporation.

(e) Fuqua would vote its shares purchased from the Trustee for the proposed merger in the same proportion as the publicly held shares.

(f) It is the intent of Fuqua to retain the present operating management of Avis.

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We believe that our client's proposed merger would be most advantageous to Avis' public shareholders, and urge you to take the steps necessary to enable the public shareholders to benefit from it.

If you require any further information regarding our client's offer, our client is prepared, as it always has been, to meet with you, the Officers and Board of Directors of Avis with respect to this offer.

Thanking you in advance for your cooperation in this matter.

Very truly yours,

Milton S. Gould

Milton S. Gould

MSG:mk

cc: Hon. M. Joseph Blumenfeld
Matthew E. Jaffe, Esq.
Department of Justice -
Antitrust Division

Board of Directors of Avis, Inc.
Mr. Drummond C. Bell
Mr. Rodney C. Gott
Mr. Robert W. Haack
Mr. William W. Lyon
Robert C. O'Brien, Esq.
Dr. Eli Shapiro
Olcott D. Smith, Esq.
Mr. William C. Fruhan, Jr.
Mr. Alva T. Bonda
Mr. John J. Scanlon

continued . . .

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cc: International Telephone & Telegraph Corp.
Mr. H. S. Geneen
Chairman & Chief Executive Officer
H. J. Aibel, Esq.
Senior Vice President & General Counsel

STATE OF NEW YORK
CITY OF NEW YORK } ss.:
COUNTY OF NEW YORK }

Jose L. Sierra, being duly sworn, deposes and

says, that he is over 18 years of age. That on the 13th day of

June, 1977, he served 2 Copies of

the attached Reply Brief for Proposed Intevenor-Appellant on

the attorney for the Plaintiff-Respondent
The United States of America

herein by depositing the same, properly enclosed in a securely sealed

post-paid wrapper, in a U. S. Post Office at 90 Church Street, New

York City, directed to said attorney ~~XX~~ as follows:

Matthew E. Jaffe
Anti-trust Division
Department of Justice
Washington, D.C. 20530

that being the place where he maintain ~~XX~~ offices for the

regular transaction of business, and the last address mentioned in

the papers last served by him

Jose L. Sierra

Sworn to before me this

13th day of June, 1977.

Monroe D. Rosen

MONROE D. ROSEN
Notary Public, State of New York
No. 24-4610090
Qualified in Kings County
Commission Expires March 30, 1979

Two (2)
Service of ~~three~~ copies of the within
is admitted this 13th day of June 1977

Attorneys for Defendant-Respondent
Intervenor Iris, Inc.

Whitman & Ransom (by KRM)
Attorneys for Trustee-Respondent
Richard Joyce Smith

(2) COPY RECEIVED

6-13-1977

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By Clara A. Hauer